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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,076	11/26/2001	David George Farmer	201-0611	9603

28787 7590 08/27/2003

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EXAMINER

BUI, BRYAN

ART UNIT	PAPER NUMBER
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2863

DATE MAILED: 08/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/995,076

Applicant(s)

FARMER ET AL.

Examiner

Bryan Bui

Art Unit

2863

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-21 is/are allowed.
- 6) ☒ Claim(s) 1,2,5,8,9,12 and 22 is/are rejected.
- 7) ☒ Claim(s) 3,4,6,7,10,11,13 and 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved; corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Notice to Applicants

1. Applicants' papers filed on 4/24/2003 have been received and entered. Claim 22 has been added. Claims 1-22 are pending in the application.
2. Applicants' remarks have been considered but it is moot in the new ground of the rejection.

Claim Objections

3. Claims 10-14 are objected to because of the following informalities: claims 10-14 should be followed as a system claims because their dependency are based on independent system claim 8. Appropriate correction is required.

The Examiner proposed claims 10-14 will be amended to corresponding with system claim 8 by applicants to examine these claims.

Claim Rejections - 35 USC § 112

4. Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails **to point out what is included or excluded by the claim language**. This claim is an omnibus type claim.

In claim 22, Applicants indicates a method for determining a closed position of a throttle plate in an engine. However, the limitations of the claimed invention only show "selecting one of first and second throttle plate closed position values stored in a memory, said selection being based on said temperature." The claimed invention fails to point out what is included or excluded by the claim language. Applicants are suggested

Art Unit: 2863

to review the operation as showed in the specification (pages 10-13) **and figure 2** to clearly show what the invention claimed. Since the claim 22 is not operated to the condition and performance as showed in Figure 2.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by Messih et al. (U.S. Patent No. 5,546,910) or Kotwicki et al. (U.S. Patent No. 5,970,961).

Messih et al. disclose a method for determining a closed position of throttle plate in an engine (e.g. column 2, lines 23-30) comprising determining a temperature of the engine (e.g. column 5, lines 22-26); and selecting one of first and second throttle plate closed position values stored in a memory based on the temperature (e.g. column 5, lines 43-61).

Kotwicki et al. discloses determining a closed position of throttle plate in an engine (e.g. abstract) comprising determining a temperature of the engine (e.g. column 3, lines 14+); and selecting one of first and second throttle plate closed position values stored in a memory based on the temperature (e.g. column 4, lines 13+, figure 1, items 117, 66, 112, 206, and electronic engine controller 12 include CPU, ROM, RAM).

Art Unit: 2863

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5, 8-9, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Messih et al (U.S. Patent No. 5,546,910).

With respect to claims 1-2, 5, 7, 8-9, 12, 14, 15-16, 19 and 21, Messih et al. teach a system and method for determining a closed position of a throttle plate in an internal combustion engine (see, e.g. column 2, lines 23-30) comprising a throttle position sensor (e.g. figure 1, item 36) for generating throttle position signal (e.g. fig. 1, item 38); a temperature sensor that generates a temperature signal indicative of temperature of a throttle body of the internal combustion engine (e.g. column 5, lines 22-26; column 8, lines 57-59); an electronic control unit configured to determine a first closed position value responsive to the position signal and selecting a value from a first position value and a second position value stored in a memory responsive to the temperature signal, the value corresponding to the closed position of the throttle plate (e.g. column 2, lines 34-65, and column 5, line 23 to column 6, line 3). Messih do not expressly mention about throttle plate position sensor. However, Messih disclose a throttle plate (fig 1, item 16) adapted to throttle position sensor (36) which generates a throttle position signal (38). It would have been obvious to one of ordinary skill in the art to modify the teachings of Messih et al to include further function to indicate a position of a throttle plate as detected by throttle position sensor having a throttle plate connected thereby as a corresponding function to provide a position of the throttle plate as claimed. The suggestion would have been made to indicate a throttle position signal to electronic engine controller when a throttle plate is detected from throttle position sensor.

Allowable Subject Matter

8. Claims 3, 4, 6, 7, 10, 11, 13, 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 2863

9. The following is a statement of reasons for the indication of allowable subject matter: Claims 15-21 are indicated of allowable over the prior art of record, because none of the prior art of record discloses the claimed combination which clearly operate by the procedure of computer program.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryan Bui whose telephone number is 703-305-4490. The examiner can normally be reached on Monday-Thursday. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow, can be reached on (703) 308-3126.

Any response to this action should be mailed to:

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

or faxed to:

(703) 308-7382/308-7722 (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Plaza 4, Arlington, VA., Fourth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

8/19/2003


BRYAN BUI
PRIMARY EXAMINER